**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR**

**FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929**

**SA.No. 49 of 1994(E)**

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**(AGAINST THE JUDGMENT AND DECREE DATED 16/09/1993 IN AS.59/1991 of DISTRICT COURT, THRISSUR IN OS.135/1986 OF SUB COURT,THRISSUR)**

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**APPELLANTS:RESPONDENTS 1 TO 7:DEFENDANTS 1 TO 7:**

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1. **MEENAKSHI AMMA,**
   **D/O.KUTTICHIRA KOCHUKUTTY AMMA, ERAVU VILLAGE,**
   **P.O.ERAVU, THRISSUR TALUK, THRISSUR DISTRICT.**

2. **NALINAKSHAN,**
   **S/O.KUTTICHIRA MEENAKSHI AMMA OF ..DO..DO..**

3. **PANKAJAKSHAN,**
   **S/O. KUTTICHIRA MEENAKSHI AMMA, FLAT 720, BUILDING 36,**
   **SAMAJA NAGAR, KANDIVALI EAST, BOMBAY.**

4. **PUSHKARAKSHAN,**
   **S/O.KUTTICHIRA MEENAKSHI AMMA,**
   **KUNDANATT HOUSE, P.O.ERAVU, THRISSUR DISTRICT.**

5. **SATHIDEVI,**
   **D/O.KUTTICHIRA MEENAKSHI AMMA,**
   **FLAT 720, BUILDING 36, SAMAJA NAGAR,**
   **KANDIVALI EAST,BOMBAY.**

6. **AMBUJAKSHAN,**
   **S/O.KUTTICHIRA MEENAKSHI AMMA, NOW AT P.B.NO.3320,**
   **DUBAI, U.A.E.**

7. **AMBIKADEVI,**
   **D/O.KUTTICHIRA MEENAKSHI AMMA, KUTTICHIRA HOUSE,**
   **P.O. ERAVU, THRISSUR DISTRICT.**

**BY ADV. SRI.T.P.KELU NAMBIAR (SR.)**
**SMT.NARAYANIKUTTY CHETTOOR**
**SRI.BABU VARGHESE**

*KSS*

**SA.NO.49/1994**

**RESPONDENTS: APPELLANTS & RESPONDENTS 8 TO 16:**

**PLAINTIFFS AND DEFENDANTS 8 TO 16:**

1. **NARAYANI AMMA,**
   **D/O.KUNDANATTUVEETTIL PARU AMMA,**
   **ERAVU VILLAGE, P.O.ERAVU, THRISSUR DISTRICT.**

2. **AMMUKUTTY AMMA OF ...DO...DO....**

3. **RADHAKRISHNAN, S/O.KUNDANATTUVEETTIL NARAYANI AMMA,**
   **KUNDANATTU HOUSE OF ...DO....DO....**

4. **BHAGHYANATHAN OF ..DO.....DO.....**

5. **GOVINDANKTTY,**
   **S/O. KUNDANATTUVEETTIL AMMUKUTTY AMMA OF ..DO...DO...**

6. **RAMACHANDRAN OF ....DO....DO.....**

7. **SASIDHARAN OF ....DO.....DO.....**

8. **GIRIJA, D/O.AMMUKUTTY AMMA OF ....DO....DO.....**

9. **PRABHAKARAN, S/O.AMMUKUTTY AMMA OF ...DO.DO...**

10. **MADHAVI AMMA,**
    **D/O.NARAYANI AMMA,**
    **NO.22, NAINIAPPAN STREET, MANNADY, MADRAS – 1.**

11. **NARAYANAN,**
    **S/O.NARAYANI AMMA, KUNDANATTU HOUSE,**
    **P.O.ERAVU, THRISSUR DISTRICT.**

12. **NANDAMUMAR OF ...DO...DO...**

**S.A.NO.49/1994**

**13. USHAKUMARI,**
**D/O.MADHAVI AMMA,**
**NO.22, NAINIAPPAN STREET, MANNADY, MADRAS – 1.**

**14. ANANDAKUMAR,**
**S/O.MADHAVI AMMA, OF ...DO....DO....**

**15. SOMASUNDARAN,**
**S/O.MADHAVI AMMA, OF ...DO.DO....**

**16. SIVADASAN,**
**S/O.MADHAVI AMMA, OF ...DO..DO...**

**17. SREEDEVI,**
**D/O.MADHAVI AMMA, OF ...DO...DO...**

**18. SUDHAKARAN,**
**S/O.AMMUKUTTY AMMA,**
**KUNDANATT HOUSE, P.O.ERAVU, THRISSUR DISTRICT.**

**BY ADV. SRI.A.P.CHANDRASEKHARAN (SR.)**
**SRI.G.SREEKUMAR**

**THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

*KSS*

**ORDER ON C.M.P.NO.64/1994 IN S.A.NO.49/1994**

**DISMISSED**

**7/09/2007** **SD/- M.SASIDHARAN NAMBIAR, JUDGE**

**/TRUE COPY/**

**P.S.TO JUDGE**

*KSS*

**M.SASIDHARAN NAMBIAR,J.**

**S.A.No .49 of 1994**

**Dated, this the 7th day of September, 2007**

**JUDGMENT**

Defendants 1 to 7 in O.S.135/1986 on the file of Sub Court, Thrissur are appellants. Respondents 1 to 9 are plaintiffs and respondents 10 to 18 are other defendants. Respondents 1 to 7 instituted the suit seeking a decree for permanent prohibitory injunction or in alternative recovery of possession in case appellants are found in possession of property. Plaint schedule property is 1.23 acres in Sy.No.255/3. Its jenm right originally belonged to Chittoor Mana. It was obtained by tarward of appellants and respondents on lease. Tarwad properties were divided as per Ext.A1 partition deed in 1124 M.E. According to respondents 1 to 7, plaint schedule property was the C schedule property in Ext.A1 partition deed entered into

by Raman Nair and respondents. Appellants are the legal heirs of deceased Raman Nair. Under Ext.A1 partition deed tarwad properties were separated and plaint A schedule property therein was allotted to Raman Nair, B schedule property was allotted to other sharers namely respondents. Plaint C schedule property therein was separated and entrusted with Raman Nair with a provision that he has to enjoy the property and with the income to conduct poojas in the temple. Ext.A1 further provides that after the death of Raman Nair, plaint C schedule property would revert back to the tarwad of respondents. Contending that on the death of Raman Nair, respondents 1 to 9 are entitled to be in possession of the property and appellants have no right over the same the suit was filed. Appellants in their joint written statement contended that tarwad of Raman Nair had no tenancy right over the plaint schedule property andthat property originally belonged to Mana and was obtained by deceased

Raman Nair as an ardent believer of God and the temple is situated in the plaint schedule property and Raman Nair was entrusted with the property to enjoy the property and Raman Nair executed Ext.B1 rent chit and has also purchased jenm right from Land Tribunal under Ext.B3 and second appellant obtained Ext.B4 purchase certificate in respect of balance extent and therefore respondents are not entitled to any relief in the suit.

2. Learned Munsiff on evidence of PW1, DWs. 1 to 4, Exts.A1 to A5 and B1 to B4 dismissed the suit holding that under Ext.B3 and B4 purchase certificates plaint schedule property belong to appellants herein and Exts.B3 and B4 purchase certificates are binding on the plaint schedule property and therefore plaintiffs are entitled to the relief sought for in the suit. Plaintiffs challenged the decree and judgment before District court, Thrissur in A.S.59/1991. Learned District Judge on reappreciation of evidence

found that Ext.A1 shows that plaint schedule property was obtained by tarwad and Exts.B1 and B2 rent chits relied on by appellants cannot be relied on and they are concocted documents and under Ext.A1 plaintiffs have title to the property and therefore plaintiffs are entitled to the decree for recovery of possession. It is challenged in the second appeal.

3. Second appeal was admitted formulating the following substantial questions of law.

1. Whether first appellate court was right in ignoring the effect of purchase certificate obtained by Raman Nair as early as 1975.

2. Whether first appellate court was right in finding title of plaint schedule property with plaintiffs in the face of Exts.B3 and B4 purchase certificate obtained by appellants.

4. Learned counsel appearing for appellants and respondents were heard.

5. Learned counsel appearing for appellants argued that there is no evidence to prove that

the tarwad obtained plaint schedule property on lease so as to divide the same under Ext.A1 partition deed. Relying on the decision of Apex court in **Neelakantan Damodaran Namboori v. Velayudhan Pillai (AIR 1958 832)** and this Court in **Sarojini v. Santha Trading Co. (1969 KLT 412)** it was argued that mere recital in Ext.A1 will not cloth respondents with title to the property unless there was pre-existing title and as there is no evidence to prove that there was a lease in favour of the tarwad, recitals in Ext.A1 will not give title to tarwad of respondents and therefore finding of the first appellate court is unsustainable. Learned counsel relying on the decision of Apex court in **Mathew v. Taluk Land Board (1979 KLT 601) and in Cheeranthoodika Ahmmedkutty v. Parambur Mariakutty Umma ((2002) 2 SCC 417)** argued that under section 72K of Kerala Land Reforms Act, purchase certificate is a conclusive title and

though in the plaint it is alleged that Exts.B3 and B4 purchase certificates were obtained by fraud, details of the fraud as contemplated in the Code of Civil Procedure were not pleaded and no evidence was also adduced to prove that Exts.B3 and B4 are vitiated by fraud and in such circumstance, they are valid and binding on all including plaintiffs and therefore finding of first appellate court that plaintiffs have title to plaint schedule property is unsustainable and therefore decree is to be set aside.

6. Learned counsel appearing for respondents/ plaintiffs argued that under Ext.A1 the karanavan of tarwad himself admitted that plaint schedule property was obtained by the tarwad on lease from landlord Mana and appellants being the legal heirs of that karanavan are not entitled to dispute that fact. It was also argued that Exts.B1 and B2 were rightly rejected by first appellate court as rent chit should not have been in the custody of

appellants and under Exts.B1 and B2 no independent lease could be set up when the property was already outstanding in the possession of the tarwad as stated in Ext.A1. Learned counsel also argued that Exts.B3 and B4 purchase certificates were obtained by Raman Nair as well as the second appellant as legal heir of Raman Nair when Raman Nair has been in possession of property as entrusted under Ext.A1 and therefore under Exts.B3 and B4 appellants are not entitled to claim title to the plaint schedule property. Learned counsel also argued that as appellants were not impleaded in the Land Tribunal proceedings, eventhough they are entitled to the property after the death of Raman Nair as provided under Ext.A1, the purchase certificates are not valid and binding on them and respondents are entitled to the decree granted by first appellate court. Learned counsel also argued that even if it is taken that lease was obtained by Raman Nair, when under

Ext.A1 he had brought that property also into common hotchpot to be divided among the members of tarwad, it is not open the legal heirs of Raman Nair to contend tarwad has no right over the property and therefore appeal is only to be dismissed.

7. As rightly pointed by learned counsel appearing for appellants first appellate court did not consider the effect of Exts.B3 and B4 purchase certificates. Finding that lease set up by appellants under Exts.B1 and B2 is not genuine and relying on Ext.A1, first appellate court found that plaint schedule property belongs to respondents 1 to 7 and on the strength of title respondents 1 to 7 are entitled to recover possession of the same. It is also true that by a mere recital in a document, respondents are not entitled to claim title as any recital in the document by itself will not cloth respondents with title, unless there is a pre existing title. The question is whether there was a pre existing

title to the tarwad as claimed by respondents 1 to 7.

8. Appellants are the legal heirs of Raman Nair. Therefore they are bound by the admissions of Raman Nair in Ext.A1. Ext.A1 shows that all the properties divided thereunder were obtained from landlord Mana. Ext.A1 prove that the entire properties namely properties covered under schedule A, B and C were obtained by the tarwad from the Mana and were divided between the members of the tarwad. Under Ext.A1, A schedule property was separated and allotted to the share of karanavan Raman Nair. B schedule properties were set apart to the share of the remaining members of tarwad. C schedule property was separated and entrusted with the karanavan Raman Nair providing that after the death of Raman Nair property shall revert back to the tarwad. The purpose of entrusting the property to Raman Nair is also stated in Ext.A1, namely to maintain the temple with the profits from the

property. In the light of Ext.A1, it is not open to the appellants to contend that there was no lease in favour of the tarwad and lease was in favour of Raman Nair individually. Even if it is taken that there was individual lease in favour of Raman Nair, being the karanavan unless it is shown that the lease was not for the benefit of tarwad, it shall enure to the benefit of the tarwad. Even if the lease was individually taken by Raman Nair, he is entitled to bring that property also to the common hotchpot and divide the property along with the remaining tarwad properties. Though it is true that plaint does not contain such allegations, from the recital in Ext.A1 it is clear that Raman Nair brought C schedule property which is the plaint schedule property, to the common hotchpot tarwad and divided it among the members of the tarwad. C schedule property was set apart and entrusted with Raman Nair. Therefore appellants are not entitled to contend that respondents 1 to 7 will

have no title under Ext.A1.

9. Though Exts.B1 and B2 rent chits were relied on by the appellants, as rightly found by first appellate court, they could not have been in the custody of appellants, if they were executed by tenants. Their custody could only be with the landlord. There is no other evidence to prove that there was individual lease either in favour of Raman Nair or second appellant.

10. Then the question is with regard to the validity of Exts.B3 and B4 purchase certificates. True, under section 72K of Kerala Land Reforms Act, purchase certificate is conclusive with regard to the assignment of jenm right of the lease hold property. The question is what is the effect of Exts.B3 and B4, when admittedly no notice was issued to any of the appellants in the O.A. Proceedings. Ext.A1 partition deed establish that C schedule property therein was entrusted with Raman Nair, with a provision that after his death it should revert back to the

other members of the tarwad. In such circumstance, it cannot be said that plaintiffs have no right over the property. It is while in possession of property, as entrusted under Ext.A1, Raman Nair purchased the jenm right from the Land Tribunal without impleading any of the members of tarwad, in the Land Tribunal proceedings. In such circumstance, Exts.B3 and B4 are not binding on appellants. Therefore inspite of Exts.B3 and B4 respondents 1 to 7 have title to the property and they are entitled to the decree for recovery of possession as found by first appellate court. There is no merit in the appeal.

Appeal is dismissed. No cost.

M.Sasidharan Nambiar
Judge

Tpl/-